Mok Han Liang v Timbalan Menteri Dalam Negeri, Malaysia & Ors

HIGH COURT (MELAKA) — CRIMINAL APPEAL NO 44-30-1995
SURIYADI HALIM OMAR J
5 MARCH 1996

Criminal Procedure *— Habeas corpus — Preventive detention — Whether designated officer applied his mind to report of arrest prior to handing report to deputy minister — Whether grounds of detention under first or second limb of Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1) — Effect of doubt — Whether deputy minister applied his mind to report before issuing the detention order — Whether deputy minister issued order mechanically or arbitrarily — Emergency (Public Order and Prevention of Crime) Ordinance 1969 ss 3(3)(c), 4(1)*

On 23 May 1995, the Deputy Minister of Home Affairs Malaysia ('the deputy minister') received a report with the relevant information on the arrest of the applicant as provided under s 3(3)(c) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'). Having satisfied himself that the applicant threatened the security of the public within the scope of the Ordinance, the deputy minister subsequently issued an order directing that the applicant be detained for a period of two years beginning 23 June 1995. The applicant filed an application for a writ of habeas corpus on the grounds that the prerequisites of the detention had not been complied with, namely (i) that the designated officer prior to the handing over of the report of the arrest of the applicant to the deputy minister had not applied his mind to that report; (ii) on the face of the document, the detention order was defective, as not only were the grounds vague and misleading but the wrong limb of s 4(1) of the Ordinance had been applied; (iii) that the deputy minister had issued the order mechanically or arbitrarily and had failed to apply his mind before issuing the detention order.

Held, allowing the application:

(1) Despite the ominous silence in s 3(3)(c) of the Ordinance on the requirement of the designated officer to apply his mind to the report prior to handing the report to the deputy minister, case law has rendered this requirement a necessity. The designated officer's role under s 3(3)(c) of the Ordinance was more than a mere conduit in the pipeline of administration. He was there to assist the deputy minister and in the process to ensure that the rights of the detainee were protected and not abused (see pp 79F, 80E); *Tan Yap Seng & Ketua Polis Negara & Ors* [1991] 2 CLJ 1400, *Lee Guan Seng v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1992] 2 MLJ 878 and *Wong Fook Nyen v Timbalan Menteri Dalam Negeri M'sia & Ors* [1988] 2 CLJ 274 followed; *Yap Hai Sing v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1995] 3 AMR 2120 distinguished.

(2) It was intended by legislature that there be a distinction between the first and second limbs of s 4(1) of the Ordinance. If there

were doubts as to the particular limb the Minister applied his mind to or whether he applied his mind at all, the detainee would reap the benefit of the doubt. On the facts of the case all the grounds bore the hallmark of violence and the usage of dangerous weapons. These grounds fell squarely within the second limb of s 4(1) of the Ordinance and as such the erroneous deletion of this second limb by the deputy minister lent credence to the assertion that he had not applied his mind sufficiently when signing the detention order, thus acting arbitrarily and mechanically (see pp 81H, 82B–F); *Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam* [1993] 2 AMR 3471 followed; *Henry a/l Arumanathan v Deputy Minister of Home Affairs & Ors* [1995] 1 CLJ 683 distinguished.

(3) The facts showed that the deputy minister had made numerous errors which only meant that either he did not make the relevant studies of the facts or had merely acted mechanically or arbitrarily. To reiterate subsequently after the defective detention that the order suffered from a typographical error could not correct the situation as the order had already been given to the detainee. If any doubts existed, they must prevail in favour of the detainee (see pp 83D–84A); *Lim Hock Siew & Ors v The Minister of the Interior & Defence* [1968] 2 MLJ 219, *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 2 MLJ 83 and *PP v Koh Yoke Koon* [1988] 2 MLJ 301 followed.

[Bahasa Malaysia summary

Pada 23 Mei 1995, Timbalan Menteri untuk Hal Ehwal Tempatan Malaysia ('timbalan menteri') telah menerima suatu laporan yang mengandungi maklumat relevan mengenai penangkapan pemohon sepertimana yang diperuntukkan di bawah s 3(3)(c) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 ('Ordinan itu'). Setelah memuaskan dirinya bahawa pemohon mengancam keselamatan orang awam dalam lingkungan Ordinan itu, timbalan menteri kemudiannya mengeluarkan suatu perintah yang mengarahkan supaya pemohon ditahan untuk satu tempoh dua tahun bermula dari 23 Jun 1995. Pemohon telah memfailkan permohonan untuk writ habeas corpus atas alasan-alasan bahawa prasyarat-prasyarat penahanan itu telah tidak dipatuhi, khususnya (i) bahawa pegawai yang dilantik, sebelum menyerahkan laporan penangkapan pemohon kepada timbalan menteri, telah tidak memakai fikirannya terhadap laporan itu; (ii) di atas muka dokumen itu, perintah penahanan itu adalah cacat, kerana bukan sahaja alasan-alasannya kurang jelas dan memperdayakan tetapi cabang s 3(3)(c) Ordinan itu yang salah telah digunakan; (iii) bahawa timbalan menteri telah mengeluarkan perintah itu secara automatik atau sewenang-wenangnya dan telah gagal untuk memakai fikirannya sebelum mengeluarkan perintah penahanan itu.

Diputuskan, membenarkan permohonan itu:

(1) Sungguhpun terdapat kesunyian yang menandakan dalam s 3(3)(c) Ordinan itu mengenai keperluan pegawai yang dilantik untuk memakai fikirannya kepada laporan sebelum menyerahkan laporan itu kepada timbalan menteri, undang-undang kes telah menyebabkan keperluan ini menjadi suatu kemestian. Peranan pegawai yang dilantik di bawah s 3(3)(c) Ordinan itu adalah lebih daripada hanya pembuluh di dalam talian paip pentadbiran. Dia berada di situ untuk membantu timbalan menteri dan dalam proses itu untuk memastikan bahawa hak-hak orang tahanan dilindungi dan tidak disalahgunakan (lihat ms 79F, 80E); *Tan Yap Seng & Ketua Polis Negara & Ors* [1991] 2 CLJ 1400, *Lee Guan Seng v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1992] 2 MLJ 878 dan *Wong Fook Nyen v Timbalan Menteri Dalam Negeri M'sia & Ors* [1988] 2 CLJ 274 diikut; *Yap Hai Sing v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1995] 3 AMR 2120 dibeza.

(2) Adalah diniatkan oleh badan perundangan bahawa terdapat pembezaan di antara cabang-cabang pertama dan kedua s 4(1) Ordinan. Jika terdapat keraguan mengenai cabang mana yang Menteri memakai fikirannya kepada atau sama ada beliau memakai fikirannya langsung, orang tahanan akan memungut faedah keraguan itu. Di atas fakta-fakta kes kesemua alasan-alasan mempunyai unsur-unsur keganasan dan penggunaan senjata-senjata bahaya. Alasan-alasan ini tergolong secara tepat di bawah cabang kedua s 4(1) Ordinan itu dan oleh itu pemotongan secara silap akan cabang kedua oleh timbalan menteri membuktikan kebenaran penegasan bahawa beliau telah tidak memakai fikiran dengan secukupnya apabila menandatangani perintah penahanan, oleh itu beliau bertindak secara sewenang-wenangnya dan secara automatik (lihat ms 81H, 82B–F); *Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam* [1993] 2 AMR 3471 diikut; *Henry a/l Arumanathan v Deputy Minister of Home Affairs & Ors* [1995] 1 CLJ 683 dibeza.

(3) Fakta-fakta menunjukkan bahawa timbalan menteri telah membuat banyak kesilapan yang hanya boleh bermakna bahawa beliau telah tidak membuat kajian relevan akan kesemua fakta-fakta kes ataupun beliau telah hanya bertidak secara automatik atau sewenang-wenangnya. Untuk mengulang kemudiannya selepas penahanan cacat itu bahawa perintah itu mengalami kesilapan tipografi tidak boleh membetulkan keadaan kerana perintah itu telah diberi terhadap orang tahanan. Jika wujudnya apa-apa keraguan, keraguan sedemikian mesti mengatasi untuk faedah orang tahanan (lihat ms 83D–84A); *Lim Hock Siew & Ors v The Minister of the Interior & Defence* [1968] 2 MLJ 219, *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 2 MLJ 83 dan *PP v Koh Yoke Koon* [1988] 2 MLJ 301 diikut.]

Notes

For cases on preventive detention under the Emergency (Public Order and Prevention Of Crime) Ordinance 1969, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1382–1384.

Cases referred to

Henry a/l Arumanathan v Deputy Minister of Home Affairs & Ors [1995] 1 CLJ 683

Karpal Singh s/o Ram Singh v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1988] 1 MLJ 469

Lee Guan Seng v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1992] 2 MLJ 878

Lim Hock Siew & Ors v The Minister of the Interior & Defence [1968] 2 MLJ 219

Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam [1993] 2 AMR 3471

PP v Koh Yoke Koon [1988] 2 MLJ 301

Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwsl Dalam Negeri, Malaysia & Ors [1976] 2 MLJ 83

Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v Datuk James Wong Kim Min [1976] 2 MLJ 245

Tan Yap Seng & Ketua Polis Negara & Ors [1991] 2 CLJ 1400

Wong Fook Nyen v Timbalan Menteri Dalam Negeri Malaysia & Ors [1988] 2 CLJ 274

Yap Hai Sing v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1995] 3 AMR 2120

Legislation referred to

Emergency (Public Order and Prevention of Crime) Ordinance 1969 ss 3(3)(c); 4(1)

M Krishnamorthi (*Tetuan Morthi, Segaran & Co*) for the appellant

Ahmad Sazilee bin Abdul Khairi (Peguam Persekutuan) for the respondents.

Suriyadi Halim Omar J: On 23 May 1995 the Honourable Datuk Megat Junid bin Megat Ayob, the Deputy Minister of Home Affairs Malaysia ('the deputy minister') received a report with the relevant information pertaining to the arrest of the applicant as provided under s 3(3)(c) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (hereinafter referred to as 'the Ordinance'). Having satisfied himself that the applicant threatened the security of the public within the scope of the Ordinance, he subsequently issued an order directing the applicant to be detained for a period of two years beginning 23 June 1995. Attached with this detention order were the grounds of the detention. In encl 17 para 7 of his affidavit the deputy minister affirmed that he only issued the order of detention after having been satisfied of the charges. He denied the allegation that his decision was mechanically or arbitrarily made.

For easy reference I lay down the 'Tuduhan-tuduhan Yang Perintah Itu Berasaskan' which reads as follows: A

1 Bahawa kamu pada awal bulan April 1994 di persimpangan Jalan Tun Dr Ismail dan Jalan Penjara, Seremban, bersama-sama seorang rakan geng telah merekrut seorang lelaki Cina masuk Geng Wah Kee 18 dan mengambil bayaran wang pendahuluan sebanyak RM4.90. B

2 Bahawa kamu pada 7 Julai 1994 jam lebih kurang 10 malam, bersama-sama sekumpulan ahli geng telah menyerang sebuah restoran Kim Kee di Taman Rasah Jaya, Seremban dan memecahkan perabot dan kerusi meja.

3 Bahawa kamu pada pertengahan bulan Julai 1994 di Pekan Nilai, Seremban, kamu telah mengugut seorang lelaki Cina dengan sepucuk C pistol supaya lelaki Cina ini menyerahkan sebuah buku pasport teman wanitanya. Pasport diserahkan.

4 Bahawa kamu pada 8 atau 9 Julai 1994 jam lebih kurang 8 malam di restoran Punca Emas, Seremban, kamu telah mengadakan 'table talk' dengan mangsa yang telah diserang oleh ahli-ahli geng kamu pada 7 Julai 1994. D

5 Bahawa kamu pada 24 Ogos 1994 jam lebih kurang 10.20 malam di tempat hiburan Jade Solid Gold Park, Lot 12212, Taman AST, Seremban, bersama-sama sekumpulan ahli geng telah meminta wang perlindungan sebanyak RM4,900 daripada seorang peniaga. Wang tidak dibayar. E

6 Bahawa kamu pada 27 Jun 1995 jam lebih kurang 12.55 malam, bersama-sama sekumpulan ahli geng dengan bersenjatakan kayu dan besi telah menyerang tempat hiburan Jade Solid Gold Park, di Lot 12212, Taman AST, Seremban dan memecahkan perabot, minuman serta papan tanda kedai.

The facts as highlighted in encl 17 referred to as 'MJMA1' (lampiran E) F was signed by one Zabidah bte Safar on 23 June 1995, on the ministerial direction of the deputy minister.

The two relevant provisions for the purposes of this case are ss 3(3)(c) and 4(1) of the Ordinance. Section 3(3)(c) permits the detention of the detainee beyond the 30-day period so long as the prerequisites of the G provision are complied with. This section reads:

3(3) Any person arrested and detained under this section may be detained in police custody for a period not exceeding 60 days without an order of detention having been made in respect of him under s 4(1):

Provided that— H

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(c) he shall not be detained for more than 30 days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector General of Police or to a police officer designated by the Inspector General in that behalf who shall forthwith report the same to the Minister. I

The deputy minister's role in this case takes centre stage after the stage of the handing over of the report of the detainee from either the Inspector General of Police or by any police officer designated by the Inspector

A General, generally referred to as the designated officer. Section 4(1) of the Ordinance reads:

> 4(1) If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the crimes involving violence that that person should be detained, the Minister shall make an order directing that that person be detained for any period not exceeding two years.

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The detainee's counsel referring to encl 2 as affirmed by the detainee's elder brother, one Richard Mok Lit Check, merely stressed three grounds at the hearing, namely:

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(i) the designated officer prior to the handing over of the report of the arrest of the detainee to the deputy minister had not applied his mind to that report;

(ii) on the face of the document, the detention order was defective, as not only were the grounds vague and misleading, but applied to the wrong limb of s [4(1)]; and

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(iii) the deputy minister had issued the order mechanically or arbitrarily and had failed to apply his mind before issuing the detention order.

On a casual reading of encl 18 para 1.4, it was not contradicted that Zaid bin Haji Yahya, the designated officer, had received the report on 23 May 1995 at 8.15am with the sole purpose of ensuring a further detention of 30 days. The designated officer reported to the deputy minister at 9am on the same day. The learned counsel was at pains to stress that it was improbable that the designated officer could have managed to peruse the report and apply his mind accordingly within the available 45 minutes before reporting to the deputy minister. Section 3(3)(c) is ominously silent as to the requirement of the designated officer to study the report before handing the report to the deputy minister. This requirement of the necessity to study the file by the designated officer came about as a consequence of the case of *Tan Yap Seng v Ketua Polis Negara & Ors* [1991] 2 CLJ 1400. Edgar Joseph Jr J, touching on the affidavit of the designated officer who merely submitted the report forthwith without more to the deputy minister, had this to say at p 1401:

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> .... my view is that it would, prima facie, be wrong for the designated officer to submit his report to the Minister immediately. By 'immediately', I mean automatically without any interval of time, for had he done so, it could be argued, with considerable justification, that he could not have directed his mind to the particular circumstances of the detainee's case. In other words, he would lay himself open to the attack that he had acted as a mere rubber stamp.

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This dictum found favour in *Lee Guan Seng v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor and another application* [1992] 2 MLJ 878. Vincent Ng JC (as he then was) justified further the correctness of this dictum by distinguishing the phrase 'shall forthwith report' as provided in s 3(3)(c) with that of 'shall forthwith submit such report that he had received from the police officer'. This further elucidation by Vincent Ng JC convinced me that despite the ominous silence as to the requirement to

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apply his mind prior to reporting to the deputy minister, the interpretation of the provision as originally propounded by Edgar Joseph Jr J (as he then was) was very sound. On a further perusal of s 3(3)(c) it could not be denied that the police had the discretion whether to extend or otherwise the 30 days' period having regard to the words which read 'may be detained in police custody ...'. Should the police decide to detain him for a period exceeding the 30 days then the conditions of sub-s (c) must be adhered to. Adherence means the Deputy Superintendent having to report to the Inspector General of Police or to the designated officer who shall forthwith report the circumstances of the arrest and detention of the detainee to the Minister. The designated officer, a Senior Assistant Commissioner of Police in the hierachy of the police authority was way above the relevant Deputy Superintendent of Police in rank.

After receipt of the report, the question that would come to mind was, if the designated officer considered the detention beyond the 30 days period as inappropriate or unnecessary, could he determine the matter insitu or was he powerless, whereby he must mechanically submit the report to the deputy minister? If the former were to be correct surely it entailed reading the contents of the report. After considering all the legal niceties with regard to the law of habeas corpus and understanding the police hierarchy and discipline, the court could not accept the unusual interpretation whereby a more senior officer could not overrule a junior officer in rank and must merely act as a conduit for the latter. His role was more than a mere conduit in the pipeline of administration. He was there to assist the deputy minister and in the process to ensure that the rights of the detainee were protected and not abused. This role as the last serving officer in the police department must be interpreted in that light as otherwise the legislature could have provided that the report be sent direct to the deputy minister without any other intervening officers. The dictum of Lim Beng Choon J in *Wong Fook Nyen v Timbalan Menteri Dalam Negeri Malaysia & Ors* [1988] 2 CLJ 274 at p 281 though not necessarily direct in point would be highly relevant and useful on this point. In that case the detainee was held under the Dangerous Drugs (Special Preventive Measures) Act 1985 and the relevant dictum revolved on the issue of delayed investigations. Lim Beng Choon J said:

> ... All that I am saying is that the underlying policy of the Act is to ensure that (i) the police should not be allowed to abuse the power conferred under s 3(i) and (ii) there must sufficient and well-founded materials placed before the Minister before he can arrive at a proper and correct decision. In short the Act does not allow any arbitrary detention based on tenuous grounds and hence Parliament in passing the Act devised the elaborate investigations that must be carried out and acknowledged that such investigations might be time-consuming.

Returning to the issue of insufficiency of time for the designated officer to study the report, the learned counsel for the applicant cited the case of *Yap Hai Sing v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1995] 3 AMR 2120 for comparison. In that case the designated officer had a mere 20 minutes before reporting to the deputy minister. Similarly as regards the current case, he canvassed that the 45 minutes was insufficient for Zaid bin Hj Yahya to apply his mind. On a perusal of the case of *Yap*

A *Hai Sing* and *Lee Guan Seng*, the facts in those cases differed with that of the present one. I found for a fact as per encl 18 para 1.5 that Zaid bin Hj Yahya did affirm to the effect that he did apply his mind after studying the report. This fact was uncontradicted by the Ministry of Home Affairs by any rebuttal affidavits, thus reducing the factor of time in this case to be irrelevant. What was significant was that this designated officer did apply his mind, a case scenario which detracted from the facts of the above two cases.

The two other grounds as canvassed by the learned counsel of the detainee were co-related and as such will be dealt with simultaneously.

C The learned counsel for the applicant ventilated that there was an erroneous deletion of the relevant limb when the first limb was left intact vis-a-vis the facts. He submitted that the facts as elicited from the detention order clearly fitted the second limb of s 4(1) of the Ordinance. He elucidated further that the first limb provided for the detention of any person from acting in any manner prejudicial to public order whilst the D second was for the purpose of the suppression of violence or the prevention of crime involving violence. He supported this interpretation by citing the case of *Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam* [1993] 2 AMR 3471 where the Supreme Court upheld the finding of the learned Vincent Ng JC. Vincent Ng JC had allowed the respondent's application for habeas corpus on the common ground that the respective orders issued E by the deputy minister were defective due to non-compliance with the provisions. The disjunctive interpretation of s 4(1) of the Ordinance by Vincent Ng JC (reproduced at p 3474) was also endorsed by the Supreme Court. The learned Judicial Commissioner (as he then was) interpreted that section to allow the Minister to detain:

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> (a) a person who has acted in any manner prejudicial to public order (or, presumably social order in our society), which encompasses a whole gamut of variegated offences such as smuggling, running illegal lotteries, preaching religious heresy, or advocating communist or racist ideology, all of which do not necessarily involve violence; and

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> (b) a person, if it is necessary for the suppression of violence or the prevention of crimes involving violence, obviously an appropriate provision for curbing gangsterism, gangland warfare and gang violence—which necessarily involve violence or the use of violence, as emphasized in the second limb.

H This endorsement by the highest court in Malaysia recognized the distinction between the first and the second limb as intended by the legislature and any vagaries would face the wrath of the judiciary. Lee Gee Lam was released when the court found for a fact that both the limbs were left unscathed by the Minister, thus giving an impression that he was to be I detained under one or both of the limbs. LC Vohrah J at p 3476 reiterated:

> We would conclude by saying that in determining the propriety or legality of a detention order made under s 4(1) the satisfaction of the Minister has to be considered in the light of the limbs under which he acted. The determination of the question as to whether he addressed his mind to the relevant limb or for that matter to both the limbs in making his detention

order is a procedural matter and if it is shown that there is some doubt as to which particular limb the Minister applied his mind to or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the *detenu*.

The above dictum sealed the nail that were there to be doubts as to the particular limb the Minister applied his mind to or whether he applied his mind at all, the detainee would reap the benefit of the doubt. Unfortunately my task was made slightly more difficult when the case of *Henry a/l Arumanathan v Deputy Minister of Home Affairs & Ors* [1995] 1 CLJ 683 was referred to by the senior federal counsel. The facts showed that Henry a/l Arumanathan had applied violence culminating in the death of a man on 11 March 1994 in Alor Setar. Going by the delineation of the limbs as propounded by the case of *Lee Gee Lam* surely the detainee would have fallen squarely into the second limb, but this was not to be so as the Minister of Home Affairs had applied the first limb. The learned Judicial Commissioner refused to interfere with the decision of the Minister and disallowed the application. Much as I would agree with the reasoning of the learned Judicial Commissioner in *Henry a/l Arumanathan*, as regards the current case I had to part company as there were other facts which indicated that the deputy minister had not applied his mind at all, leading to the erroneous usage of the wrong limb. In our present case all the six grounds bore the hallmark of violence reflecting gangsterism at its best as intimidation, violence and the usage of dangerous weapons were common in the commission of the offences. If the grounds were to be believed and accepted, the acts of the detainee would fall squarely under the second limb ie the limb which envisaged the preponderance of violence. The erroneous deletion of this second limb by the deputy minister did lend credence to the assertion or contention that the latter had not applied his mind sufficiently when signing the detention order, thus acting arbitrarily and mechanically.

The other reasons which led the deputy minister to be misled could be amply illustrated by analyzing the grounds of detention which were suspect and groundless. Ground 2 asserted that on 7 July 1994 the detainee together with other members of his gang had pounced on a restaurant in Seremban causing much damage in the process. Yet on a perusal of encl 3 as reflected by exh MLC3, factually the detainee had on 6 July 1994 either just entered Thailand or Malaysia. I found myself bewildered as I could not imagine that the detainee who hours earlier was at the Thailand-Malaysia border could have been involved in a well-planned attack on a restaurant on 7 July 1994. The photostated copies of the detainee's passport proved that he was a frequent visitor to Thailand. These facts were not challenged.

On top of that, ground 6 reads that on 27 August 1995 at about 12.55am the detainee with the members of his gang had attacked another place, also causing much damage to the premises. I found this ground absolutely ludicrous as the document (lampiran E) on which the charges were typed out was dated 23 June 1995 whilst the relevant date was months to come. The deputy minister as per encl 23 attempted to rectify this strangeness of facts by alleging in para 5 that the actual date was 27

August 1994 and not 27 August 1995 as corroborated by Zabidah bte Safar as per encl 22. This assertion unfortunately is disastrous to the case of the Ministry of Home Affairs as these grounds were attached to the detention order unamended and had been handed to the detainee on 23 June 1995 at 3.40pm.

Zabidah bte Safar missed the error at the first stage whilst the Deputy Minister [did the same] at the second tier. This negligence on the part of the Deputy Minister implied that the Deputy Minister had not focused his attention fully to the grounds of the charges but had merely signed the document. If the detainee had received a defective order it would mean that the detainee had not been informed correctly of the grounds of the detention. This defective document had prejudiced his rights as he had the right to know the correct grounds and charges. Admitting the mistake at this stage was too late in the day as the fundamental rights of the detainee had been compromised.

With the above facts I could not but conclude that the deputy minister had made numerous errors which only meant that either he did not make the relevant studies of the facts or had merely acted mechanically or arbitrarily. To reiterate subsequently after the defective detention [that the] order suffered from a typographical error could not correct the situation as the order had already been given to the detainee. On this point over the issue of errors detected on the face of the records I sought solace from the dictum of Wee Chong Jin CJ in *Lim Hock Siew & Ors v The Minister of the Interior and Defence* [1968] 2 MLJ 219 at p 221 column B right when he said:

> If authority is needed that a writ of habeas corpus will issue where an order, which is relied upon as justification for the detention of a person, is bad on its face, I need only refer to the judgment of Lord Wright in *Greene v Secretary of State for Home Affairs* [1941] 3 All ER 388 at p 403 where he states:
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> > 'It would be superfluous to point out that the basis of the conclusion here adopted is that the order and statement are good on their face—that is, that they show a competent exercise of a lawful authority. If an order or warrant is bad on its face, it can give no legal justification for the imprisonment. Thus, in *Bushell*'s case (1670) Vaugh 135, a commitment which showed that it was to punish persons for giving a verdict of which the court did not approve, and which was said to be *contra plenam et manifestam evidentiam et contra directionam curiae in materia legis*, was held to be bad as showing a cause which was not lawful.'

Nearer to home, in *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 2 MLJ 83 at p 84 Abdoolcader J (as he then was) opined:

> An order of detention based on irrelevant grounds is invalid and if any of the grounds furnished to the *detenu* are found to be irrelevant while considering the application of the relevant legislation under which the detention is ordered and in that sense are foreign thereto, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed (*Rameshwar Shaw v District Magistrate, Burdwan & Anor* AIR 1964 SC 334).

At the end of the day, if any doubts existed they must prevail in favour of the detainee and the case of *PP v Koh Yoke Koon* [1988] 2 MLJ 301 at p 302 lent support to this principle when Hashim Yeop A Sani SCJ said:

> Detention not in accordance with law is inconsistent with the fundamental right guaranteed under art 5(1) of the Constitution. Where a law deals with detention, there are abundant authorities to show that the provisions of such law must be construed strictly and, in the case of doubt, the court should lean in favour of the subject. See also *Andrew s/o Thamboosamy v Superintendent of Pudu Prison, Kuala Lumpur* [1976] 2 MLJ 156.

Earlier to this the same principle was expressed in *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v Datuk James Wong Kim Min* [1976] 2 MLJ 245 at p 250 (column I right hand) by Lee Hun Hoe CJ (Borneo) in the following terms:

> Preventive detention is the detention of a person without trial as opposed to punitive detention where a person is detained after a trial in a court of law in which he is proved to have committed an offence punishable under certain provisions of the penal law. Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the court. In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorizing detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of habeas corpus is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. See *Ex p Johannes Choeldi & Ors* [1960] MLJ 184.

To summarize this case I decided that the respondent had rebutted the allegation of the designated officer failing to apply his mind prior to reporting to the deputy minister. Unfortunately this was not the case pertaining to the detention order per se as well as to the factor as to whether the deputy minister did apply his mind before signing the detention order. I found for a fact many glaring errors which could have been detected by a cursory examination but escaped detection at the second stage when the deputy minister was about to sign the order. Over and above that carelessness which compromised the rights of the detainee, the wrong limb was applied, indicating further the casual and cavalier manner of the deputy minister over this case (see also *Karpal Singh s/o Ram Singh v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1988] 1 MLJ 469). I accordingly allowed the habeas corpus application and ordered the detainee to be released forthwith.

Application allowed.

Reported by Kenneth Goh